

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JEFFREY R. LINS COTT and J L AVIATION,))
INCORPORATED, an Oregon corporation,))

Plaintiffs,)

vs.)

VECTOR AEROSPACE, a Canadian))
corporation; ACROHELIPRO GLOBAL))
SERVICES USA, INC., a Washington))
corporation; and ACROHELIPRO GLOBAL))
SERVICES INCORPORATED, f/k/a ACRO))
AEROSPACE INCORPORATED, a Canadian))
corporation,))

Defendants.)

Case No. CV05-682-HU

OPINION AND ORDER

Michael B. Mendelson
Law Offices of Michael B. Mendelson
888 S.W. Fifth Avenue, Suite 650
Portland, Oregon 97204
Attorney for Plaintiff

James M. Finn
Michael D. Furlong
Schwabe, Williamson & Wyatt
1211 S.W. Fifth Avenue, Suite 1900
Portland, Oregon 97204
Attorneys for defendants

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1 HUBEL, Magistrate Judge:

2 This is a contract dispute centered on a helicopter engine
3 turbine module. Plaintiffs' Amended Complaint alleges that
4 defendant Acrohelipro Global Services, Inc. (ACRO) failed properly
5 to overhaul plaintiff Jeffrey Linscott's helicopter engine turbine
6 module (turbine), which was being used by his company, plaintiff JL
7 Aviation, Inc. (JLA) Defendants have counterclaimed for amounts
8 they claim JLA owes in connection with materials and services ACRO
9 provided to JLA, including the cost of overhauling the turbine.

10 Linscott is a Major in the Air Force Reserve, and was ordered
11 to serve a six month tour of active duty in Mississippi, commencing
12 December 5, 2002. The tour was later extended to July 31, 2003.

13 Defendants move for partial summary judgment in their favor
14 against plaintiffs' Second Claim for Relief, for violation of § 527
15 of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. Appx. §
16 527.¹ The basis for the motion is that plaintiffs failed to comply
17 with the statutory requirement that the servicemember provide a
18 creditor with copies of his military orders within 180 days after
19 termination or release from service.

20 **Standard**

21 Summary judgment is appropriate "if the pleadings,
22 depositions, answers to interrogatories, and admissions on file,
23 together with the affidavits, if any, show that there is no genuine
24

25 ¹A previous version of the statute, § 526 of the Soldiers
26 and Sailors Civil Relief Act (SSCRA), 50 U.S.C. Appx. § 526, was
27 superseded in 2003 by § 527 of the Servicemembers Civil Relief
Act (SCRA). Plaintiffs concede that the applicable statute is §

1 issue as to any material fact and that the moving party is entitled
2 to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

3 **Discussion**

4 Section 527 provides,

5 An obligation or liability bearing interest at a rate in
6 excess of 6 percent per year that is incurred by a
7 servicemember ... before the servicemember enters
8 military service shall not bear interest at a rate in
9 excess of 6 percent per year during the period of
10 military service.

11 § 527(a)(1). However, to obtain the benefit of this interest rate
12 limitation, the servicemember

13 shall provide to the creditor written notice and a copy
14 of the military orders calling the servicemember to
15 military service and any other orders further extending
16 military service, not later than 180 days after the date
17 of the servicemember's termination or release from
18 military service.

19 Id. at (b)(1). Section 527 applies retroactively to any case that
20 is not final before December 19, 2003.

21 ACRO contends that plaintiffs cannot prevail on their § 527
22 claim because they have not demonstrated that they, or their
23 agents, ever sent ACRO a copy of Linscott's military orders or
24 extended orders, as required to obtain relief under the statute.

25 Defendants previously addressed this issue in their Motion to
26 Dismiss. In the original complaint, plaintiffs alleged that
27 "Linscott ... sent the ACRO defendants a copy of his orders and
28 advised them they were in violation of the SSCRA...." Complaint ¶
4.9. Defendants moved to dismiss plaintiffs' Second Claim for
relief, based on the plaintiffs' failure to allege with specificity
whether the orders were sent within the required time limits of §

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1 527. In its ruling on the motion, the court granted plaintiffs
2 leave to amend the complaint "to allege, if they can in good faith,
3 that Linscott provided defendants with written notice and a copy of
4 his military orders within the 180 days after his release from
5 military service."

6 When plaintiffs filed their Amended Complaint, plaintiffs
7 again failed to allege whether they sent the orders within the time
8 limits imposed by § 527. The Amended Complaint alleged, "[T]he ACRO
9 defendants were fully advised of Linscott's active duty status and
10 the provisions of the SSCRA and had been tendered a copy of
11 Linscott's orders." Amended Complaint ¶ 4.9.

12 Plaintiffs now acknowledge that on July 16, 2003, while
13 Linscott was on active duty, JLA's counsel, Bill Lewis, *offered* to
14 send ACRO a copy of Linscott's extended orders if ACRO would send
15 JLA its fax number. See Declaration of Cathy Coates in Support of
16 Defendant's Motion for Partial Summary Judgment, Exhibit 2.
17 Plaintiffs contend that ACRO never sent JLA's counsel the fax
18 number, so JLA never sent the copy of the orders to ACRO. ACRO
19 contends that four hours after JLA's counsel sent the e-mail
20 offering to send a copy of the orders, the cash manager for ACRO
21 responded with an e-mail containing the fax number. In any event,
22 there is no evidence that a copy of Linscott's orders was ever
23 received by ACRO. Linscott did send ACRO a handwritten note saying,
24 "The Soldier's Sailor Relief Act [sic] letter will follow..."
25 Coates Declaration, Exhibit 1. However, according to ACRO, Linscott
26 never sent the promised letter. Coates Declaration ¶ 9. Linscott
27

1 has testified that he believes he sent a copy of his orders to
2 ACRO, but has been unable to find any documentation which supports
3 that belief.

4 Defendants argue that JLA's conduct fails to satisfy its
5 obligations under § 527 for three reasons. First, the burden is on
6 the plaintiffs to send the orders ("the servicemember shall provide
7 to the creditor..."). The statute does not require the creditor to
8 ask for the orders. Second, JLA's counsel's offer referred only to
9 Linscott's *extended* orders. Section 527 requires the servicemember
10 to send a copy of the "military orders calling the servicemember to
11 military service and any orders further extending military
12 service...." (emphasis added). Third, as noted, there is no
13 evidence that JLA sent either a copy of Linscott's orders or the
14 orders extending his service to ACRO.

15 Defendants contend that because plaintiffs failed to send the
16 orders as required under the statute, they fail to qualify for the
17 protection of § 527, and defendants are entitled to summary
18 judgment on the Second Claim.

19 Plaintiffs argue that, in light of the judicial policy of
20 construing the SSCRA liberally in favor of the military person,
21 see, e.g., LeMaistre v. Leffers, 333 U.S. 1, 6 (1948) (SSCRA should
22 be read with "an eye friendly to those who dropped their affairs to
23 answer their country's call"), the court should allow the
24 servicemember the protections of the statute upon a showing of
25 substantial compliance with the requirement that copies of the
26 orders be sent within 180 days, especially since Linscott's service
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1 straddled the transition period between § 526 and § 527.
2 Plaintiffs point out that § 527(b)(1) was not yet in existence
3 while Linscott was on active duty, and did not take effect until he
4 had been off active duty for over four months.² Plaintiffs contend
5 that the court should allow Linscott to show "substantial
6 compliance" with the 180 day requirement "during the transition
7 period."

8 As support for their "substantial compliance" argument,
9 plaintiffs argue that Congress "anticipated that any time limit on
10 a servicemember's right to request a reduction in interest rates
11 could have harsh consequences" and intended to mitigate those
12 consequences by requiring, in § 515 of the Act, that the Secretary
13 of Defense notify servicemembers and people entering the armed
14 services of the protections and obligations of the Act. Plaintiffs
15 cite from the following legislative history:

16 The original section provided no guidance on how the
17 servicemember should initiate an interest rate reduction.
18 The Committee believes the burden should be on the
19 servicemember to inform the creditor of the order for
20 military service within a specific time. ... The
21 servicemember would be required to submit to the creditor
22 written notice and a copy of military orders. These
23 orders indicate the period of time for which the
24 servicemember is called to duty. If there is an extension
25 of the military duty obligation, the servicemember
26 receives amended orders and would be required to provide
27 the amended orders to the creditor in order to extend
28 further the 6 percent protection. The Committee notes
that, while the section would allow for notice to the
creditor of up to 180 days after the servicemember's
termination or release from military service, it would
obviously be of advantage to servicemembers to provide

26 ²Linscott went off active duty at the end of July 2003 and §
27 527 went into effect in mid-December 2003.

1 notice to creditors more quickly so that their monthly
2 payments are reduced during the period of military
service when their income may be reduced.

3 The Committee expects that the written notice by the
4 Secretary concerned to the servicemembers and persons
about to enter military service ... regarding the
5 protections of the Act, would include specific
information concerning the reduction in the interest rate
6 and the responsibility of the servicemember to provide
notice of military service to the creditor.

7 148 Cong. Rec. 2367 (2003).

8 Plaintiffs quote the second paragraph of this legislative
9 history as support for their argument that § 515 of the Act,
10 requiring the Secretary to notify servicemembers and persons about
11 to enter military service about the protections of the Act,
12 including "the responsibility of the servicemember to provide
13 notice of military service to the creditor," qualifies the
14 notification requirements of § 527(b)(1). In other words,
15 implementation of the 180-day deadline for notifying creditors was
16 intended to be mitigated by the § 515 requirement that the
17 Secretary provide notice to servicemembers of "benefits accorded by
18 this Act" and the servicemember's responsibility to provide "notice
19 of military service to the creditor."

20 Plaintiffs argue that Linscott did not benefit from this
21 intended mitigation because the requirement of written notice from
22 the Secretary is limited to servicemembers and persons about to
23 enter military service, and is not available to servicemembers who,
24 like Linscott, had already left the military when the SCRA was
25 enacted. Thus, Linscott was never advised by the Secretary of the
26 new notification requirements of § 527. Under such circumstances,
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1 plaintiffs argue, the 180-day notification requirement should not
2 be given full effect and substantial compliance with the notice
3 requirement should be deemed sufficient.

4 To show substantial compliance, plaintiffs point to the
5 following facts: Linscott's attorney offered to provide ACRO a copy
6 of Linscott's extended orders; ACRO knew Linscott was on active
7 duty, even if it did not have a copy of his orders; ACRO does not
8 contend that it needed the orders to determine whether Linscott was
9 entitled to the protections of the statute; and ACRO does not claim
10 it was prejudiced by not receiving a copy of Linscott's orders.

11 Defendants counter that nothing in the statute explicitly
12 conditions the requirement that the servicemember send a copy of
13 his military orders to his creditors on the Secretary's
14 notification to the servicemember that the requirement existed.
15 Defendants argue that ignorance of the law is not a defense.
16 Moreover, the statute explicitly says that the burden is on the
17 servicemember to comply with the statute, and the legislative
18 history quoted above shows that Congress intended the 180 day limit
19 to be strictly enforced. Plaintiffs concede that the legislative
20 history of the Act indicates that Congress intended the 180-day
21 time limit to be strictly enforced and that Congress placed the
22 burden on the servicemember to give the statutory notice.

23 I do not find plaintiffs' argument for substantial compliance
24 persuasive. First, no provision in the SSCRA permits the court to
25 excuse the servicemember from providing a copy of his orders to a
26 creditor on the basis of "substantial compliance," and I decline to
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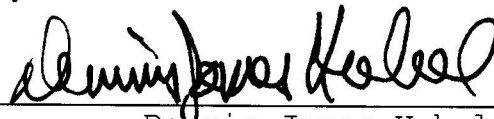
1 rewrite the statute Congress passed. Second, even if the court were
2 empowered to consider substantial compliance, Linscott did not
3 substantially comply with the statutory requirement. The record
4 before the court shows only that Linscott and his counsel made
5 unfulfilled promises to send ACRO either a copy of Linscott's
6 orders or a "Soldier's Sailor Relief Act letter." Linscott knew at
7 the time he left active duty on July 31, 2003 that he intended to
8 invoke the protections of the SSCRA in the dispute with ACRO.
9 Section 527 went into effect in December 2003. Plaintiffs were
10 represented by counsel at the time Linscott left active duty, in
11 July 2003, and at the time this action was filed, on May 13, 2005.
12 Despite the fact that the notification to creditors requirement of
13 the SSCRA has been in effect for almost four years, Linscott has
14 yet to send ACRO a copy of his orders. This conduct does not
15 constitute substantial compliance with the notification
16 requirement.

17 Conclusion

18 Defendants' motion for partial summary judgment (doc. # 62) on
19 the Second Claim for Relief is GRANTED.

20 IT IS SO ORDERED.

21 Dated this 27th day of July, 2007.

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23 

24 Dennis James Hubel
25 United States Magistrate Judge
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